

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 17 of the )  
Cable Television Consumer Protection )  
and Competition Act of 1992 )

ET Docket No. 93-7

Compatibility between Cable Systems )  
and Consumer Electronics Equipment )

**COMMENTS OF TELE-COMMUNICATIONS, INC.**

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#### APPENDIX A

Washington, D.C. Yellow Pages, "Television" Section

#### APPENDIX B

Sample Universal Remote Control Packaging With Listing of  
Compatible Devices

## **SUMMARY**

### **I. SHORT-TERM COMPATIBILITY PROPOSALS**

TCI generally supports the Notice's short-term compatibility approach. However, it recommends the following amendments to the Notice's proposals:

- Expand the proposed consumer education program to include point-of-sale notification and labelling requirements. Consumer education requirements imposed solely on cable operators will do little good if the TV/VCR experiencing the incompatibility is purchased by a consumer who was not properly educated at the point of sale. Educational efforts will ameliorate compatibility problems only if undertaken by both the cable and consumer electronics industries.
- The proposal to require operators to list the models and retail sources of third-party remotes would cause additional consumer confusion and frustration, undue administrative and economic burdens for the cable industry and the Commission, and substantial inequities among third-party manufacturers/retailers. To avoid these undesirable results, TCI offers a more practical approach in which both cable operators and remote manufacturers play integral roles in notifying consumers about compatible third-party remotes.
- The Commission should permit cable operators to recover their costs for supplementary equipment used to achieve compatibility and make clear that operators which do not offer subscribers the option of renting a remote control are not subject to the notification requirements.

### **II. LONG-TERM COMPATIBILITY PROPOSALS**

TCI urges the Commission to proceed cautiously in implementing long-term compatibility measures.

In this regard, TCI opposes the adoption of the current version of EIA/ANSI 563 because it is incompatible with digital compression and interactive video services. While EIA/ANSI 563 will play a major role in achieving compatibility, the Commission

should await the development of the revised analog/digital version of EIA/ANSI 563 which is being diligently pursued by a joint cable/electronics manufacturer industry group. This upgraded version will be more cost effective and will provide substantial flexibility for accommodating current and future cable technologies and services.

Moreover, regardless of which version of the Decoder Interface standard is ultimately adopted, the Commission should allow all new cable technologies and video services that emerge after such adoption to be implemented by cable operators even if they are incompatible with that standard. A rule requiring all cable services to be delivered through the Decoder Interface will constitute a de facto moratorium on the development of innovative cable services and technologies in direct contravention of Commission and congressional objectives.

While TCI supports the adoption of the IS-6 channel plan, it notes that this plan will not be able to identify channels in a digitally compressed environment. TCI continues to believe the only way to ensure long-term compatibility between TVs/VCRs and cable systems with respect to tuning capacity is to require the incorporation of modular tuners in TVs and VCRs.

Moreover, to reduce consumer confusion and frustration, the Commission should require all new TVs and VCRs which tune cable frequencies to comply with all "cable ready" specifications, regardless of whether the TV/VCR manufacturer uses the term "cable ready" or "cable compatible" to market its product.

The Commission's proposal to prevent cable operators from charging for component descramblers/decoders is contrary to longstanding Commission precedent, including (1) the Commission's policy of requiring cost-causative customers to incur the costs of their equipment use, (2) its unbundling requirement, and (3) its preference for benchmark over cost-of-service regulation. Equally important, this proposal will reduce cable operator incentives to promote and utilize EIA/ANSI 563, thereby substantially limiting the utility of the Decoder Interface standard as a compatibility-enhancing mechanism.

The Notice's proposals to encourage "in the clear" technologies also should be rejected. The preference for these conditional access methods is at odds with Commission precedent recognizing scrambling as integral to the protection of intellectual property. This preference is also wholly unsupported by the record in this proceeding.

TCI urges the Commission to refrain from prematurely adopting digital transmission and scrambling/encryption standards. The imposition of such standards by the Commission was expressly considered and rejected by Congress. Moreover, given the dynamic state of technology, premature standards could stifle program and technology innovations. Finally, any standards which are ultimately adopted should be developed and recommended by industry standards bodies and only thereafter prescribed by the Commission.

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**COMMENTS OF TELE-COMMUNICATIONS, INC.**

Tele-Communications, Inc. ("TCI") hereby files its comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

**I. COMMISSION'S SHORT-TERM COMPATIBILITY PROPOSALS**

TCI generally supports the Notice's short-term proposals for achieving compatibility. These short term measures, notably the provision of supplementary equipment to requesting subscribers and increased consumer education, will meet Section 17's compatibility requirements by enabling consumers to:

- watch one channel while simultaneously recording another;
- record consecutive programs (scrambled or unscrambled) appearing on two different channels; and

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<sup>1</sup> Implementation of Section 17 of the Cable Television Consumer Protection, Compatibility between Cable Systems and Consumer Electronics Equipment, Notice of Proposed Rulemaking, ET Docket No. 93-7, FCC 93-495 (released December 1, 1993) ("Notice").



- use the advanced television picture generation and display features of their consumer electronics equipment.

However, TCI is troubled by certain aspects of the Notice's proposals regarding the ability of cable operators to recover their costs for providing supplementary equipment and the consumer notification obligations of cable operators with respect to third-party remote controls. TCI comments on each of these issues below.

#### **A. Use of Supplementary Equipment**

##### **1. TCI Supports the Use of Supplementary Equipment To Achieve Compatibility**

TCI supports the Notice's proposal to require cable systems that use scrambling technology to provide supplementary equipment, at the request of individual subscribers, to achieve compatibility for existing equipment.<sup>2</sup> The Notice properly recognizes the valuable contribution set-top boxes and associated equipment have made and will continue to make in achieving compatibility. As TCI and others have demonstrated throughout this proceeding, supplementary equipment exists today that will allow consumers to enjoy the features of their TVs and VCRs.<sup>3</sup>

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<sup>2</sup> See Notice at ¶ 12. TCI also supports the Notice's proposal to require cable operators to provide subscribers the option of having all signals whose reception does not require use of a converter to pass those signals directly to the subscriber's TV or VCR, without passing through the set-top device. Id.

<sup>3</sup> See TCI Comments at 6-15. Supplementary equipment available to achieve this compatibility includes bypass switches that route non-scrambled signals around the descrambler to the television; universal remotes that control TVs, VCRs, and cable descramblers; dual-tuner descramblers that pass two video channels instead of just one; and devices like VCR-Plus, which viewers can program to record programming delivered through a

Moreover, given the unsynchronized technology cycles of the cable and consumer electronics industries, these supplementary devices will always play an important role in achieving compatibility. Digital video decompression, advanced program guides, on-screen displays, etc. represent new video technologies and services that subscribers will desire, yet which will require the use of supplementary equipment -- such as advanced, computerized set-top boxes -- for delivery to consumers. As one commenter described it, "As long as there is technological progress, some type of converter will be required to interface today's distribution systems with an aging population of TV receivers and VCRs."<sup>4</sup>

**2. Consistent with Existing Commission Rules, Cable Operators Must Be Permitted to Recover Their Costs For Supplementary Equipment Used to Achieve Compatibility**

The Notice asks whether and how cable systems should be allowed to charge for supplementary equipment needed to facilitate the operation of enhanced features of consumer equipment.<sup>5</sup> TCI submits that longstanding Commission precedent, as well as specific rules adopted in the recent rate regulation and tier buy-through orders, clearly authorizes cable operators,

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descrambler.

<sup>4</sup> Continental Cablevision Comments at 28. See also Cablevision Comments at 22-23, 28; CATA Comments at 15; Discovery Communications Comments at 2; Greater Media Comments at 9; Scientific Atlanta Comments at 5; Time Warner Comments at 56-57.

<sup>5</sup> See Notice at ¶ 12.

at the very least, to recover their costs for providing such supplementary equipment.

The Commission has long recognized that a party causing an expense to be incurred should bear the cost and that allocating costs in this fashion is not discriminatory.<sup>6</sup> In its recent tier buy-through order, the Commission reiterated its commitment to this rate policy:

Those commenters who addressed the issue of whether or not a cable operator may charge basic only subscribers availing themselves of the buy-through option for the converter necessary to enable them to purchase per channel or per program offerings are unanimous in their belief that operators should be permitted to do so. We agree. To prohibit such charges would be discriminatory to subscribers who exercise their choice to obtain only basic cable service, since their rates would increase if the costs of addressable converters were shared by all subscribers to the systems.<sup>7</sup>

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<sup>6</sup> For example, in 1977, the Commission decided that in order to achieve its goal of a fully competitive market for telephone inside wiring, the "cost-causative ratepayer" (i.e., the customer ordering the service) should be made to bear the full burden of costs of connecting inside wiring to the telephone network, as opposed to the historical method of spreading these costs over the entire present and future ratepayer base. Accordingly, the Commission "detariffed" inside wiring at the federal level and preempted all regulation of inside wiring at the state level. Reconsideration Order, 92 F.C.C.2d 864, at ¶¶ 44-45 (1983). The Commission based its deregulation of inside wiring on its desire to "increase competition, to promote new entry into the market, to produce cost savings which would benefit the ratepayers, and to create an unregulated competitive marketplace environment for the development of telecommunications." Detariffing the Installation and Maintenance of Inside Wiring, 59 R.R.2d (P&F) 1143, at ¶ 2 (1986) (footnote omitted).

<sup>7</sup> Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Buy-Through Prohibition, 8 FCC Rcd. 2274, at ¶ 23 (1993) (emphasis added) ("Tier Buy-Through Order").

Finally, the Commission's rules adopted in the rate order expressly permit cable operators to recover their costs for "all equipment in a subscriber's home that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers ...."<sup>8</sup> Indeed, the Notice expressly recognizes the applicability of this rule in its proposal to permit cable operators to charge for "[supplementary] equipment and its installation in accordance with the rate regulation rules for customer premises equipment used to receive the basic service tier."<sup>9</sup> Accordingly, cable operators should be permitted to recover their equipment and installation costs for compatibility-enhancing supplementary devices from those subscribers who actually request and use them.

## **B. Consumer Education Programs**

### **1. The Notice's Consumer Education Proposals Must Be Expanded to Include Point-Of-Sale Notification and Labelling Requirements**

While the Notice recognizes the significance of consumer education, its specific proposals will not achieve their intended objectives. Notification of potential compatibility conflicts provided by the cable operator alone, as envisioned by the

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<sup>8</sup> 47 C.F.R. § 76.923(a) (identifying converter boxes, remote controls, additional outlets, and other cable home wiring as subject to this actual cost standard).

<sup>9</sup> Notice at ¶ 12 (citing 47 C.F.R. § 76.923). See also id. ¶ 35 (IV) ("Cable systems would be able to charge for providing such hardware and its installation"); id. at ¶ 28 ("cable ready" specifications would apply to "all consumer electronics equipment ... that is marketed as 'cable ready' or otherwise marketed as intended for connection directly to cable service") (emphasis added); id. at ¶ 20.

Notice, will not eliminate consumer confusion and frustration. Stepped-up notification and educational efforts will succeed only if they are undertaken by both the cable and consumer electronics industries.<sup>10</sup>

The consumer education requirements which the Notice contemplates imposing solely on cable operators will do little good if the TV/VCR experiencing the incompatibility has already been purchased by a consumer who was not properly informed of this possibility at the point of sale. There is only one way to avoid this fundamental problem. Consumers must be better educated at the point of sale. Thus, prior to purchase, consumers should be (1) notified that some features of the TV or VCR may not work or may not be necessary if connected to a cable system, and (2) encouraged to consult their local cable operator for further information. In addition, the Commission should require the attachment of a label to the boxes containing TVs and VCRs which (1) indicates the tuning range of the receiver; and (2) informs the consumer that certain TV/VCR features may not be compatible with some of the services they may choose to purchase from cable operators. This information should be included in the owner's manual, as well.<sup>11</sup>

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<sup>10</sup> See TCI Comments at 11-15. See also CATA Comments at 9; Continental Cablevision Comments at iv, 9, 28-29, Appendix A; Mesa, Arizona Comments at 3; NYC Comments at 5-6, Appendix A at 22-24; Telecable Comments, Appendix A at 40; Time Warner Comments at 75-77.

<sup>11</sup> The Commission has imposed labelling requirements in similar circumstances. See, e.g., Amendment of Part 15 of the Commission's Rules to Implement the Provision's of the Television Decoder Circuitry Act of 1990, 6 F.C.C. 2419, at ¶ 42 (1991) ("We

TCI willingly accepts its responsibility to improve its consumer education efforts. It respectfully submits, however, that unless the Commission imposes similar notification requirements on the consumer electronics industry, the Notice's consumer education proposals will fail to achieve their intended objectives of reducing consumer confusion and frustration.

**2. The Notice's Proposals to Require Cable Operators to List the Models of Compatible Third-Party Remotes and Local Retail Sources for These Remotes Are Flawed as A Matter of Law and Public Policy**

The Notice proposes to require cable systems that "offer remote control capability with their set-top devices" to notify subscribers that they may purchase remotes from other sources and to list compatible remote control models and the local retail stores where they can be purchased.<sup>12</sup> For the legal and policy reasons stated below, TCI strongly opposes the proposals to require specific listings of remote controls and local retail sources, as well as the Notice's threshold test for determining whether cable operators must include such information as part of their consumer education programs.<sup>13</sup> In the next section, TCI

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believe the consumer would be better informed in making a purchase if the box or other package in which the television receiver is marketed carried a statement in a prominent location, visible to the buyer before purchase, identifying which of these closed-caption features are supported and which are not. We also believe such information should be in the owner's manual"). See also 47 C.F.R. § 15.119(m).

<sup>12</sup> Notice at ¶ 16. The Notice seeks comment on whether the list of compatible remotes should be limited to those available locally or nationwide. Id.

<sup>13</sup> TCI supports the Notice's proposals to require cable operators to inform consumers (at the initiation of service and thereafter annually) about compatibility problems and how they

proposes a more practical approach for informing cable subscribers about compatible third-party remotes which still accomplishes the Commission's underlying goals.

The Notice's proposals regarding remote controls exceed the statutory mandate of Section 17(c)(2)(D). That section merely requires cable operators to:

- (1) notify their subscribers that they may purchase remote controls from any third-party source,<sup>14</sup> rather than mandating that operators specifically identify all such sources; and
- (2) specify the "types of remote control units,"<sup>15</sup> i.e., the generic kinds of remotes,<sup>16</sup> that are compatible with the operators' converter boxes, rather than requiring operators to enumerate the particular models<sup>17</sup> of compatible remotes.

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can be resolved. In this regard, TCI agrees that the specific information items outlined in ¶ 15 of the Notice should constitute the principal part of cable operators' consumer education programs.

<sup>14</sup> 1992 Cable Act § 17(c)(2)(D)(i) (emphasis added).

<sup>15</sup> Id. § 17(c)(2)(D)(ii) (emphasis added).

<sup>16</sup> The word "type" or "types" as used here is well defined as "a group of persons or things sharing common traits or characteristics that distinguish them as an identifiable group or class; a kind; category.... Synonyms: kind, sort, nature, character, ilk." The American Heritage Dictionary of the English Language 1388. See also Merriam Webster's New Collegiate Dictionary 1278 (Tenth ed. 1993).

<sup>17</sup> The word "model" as used here is well defined as "a style or design of an item: *His car is last year's model.*" See The American Heritage Dictionary of the English Language 843. See also Black's Law Dictionary 1003 (6th ed. 1990).

Section 17(c)(2)(D)(ii)'s use of the generic word, "types," contradicts a requirement that a cable operator list specific remote devices. If Congress had intended such specificity, it would have directed cable operators to identify the "models" of compatible remotes. Nor can one argue that "type" and "model" are interchangeable here, since Congress' use of these words in other provisions of the 1992 Cable Act reflects

Thus, as a matter of law, the Commission's very significant broadening of these narrow statutory requirements to a listing of "all local sources" and "all models (local or national)" is tenuous at best.

Adoption of the proposed expansion of the statutory directives would be equally imprudent as a policy matter. First, the administrative and financial burdens imposed on cable operators and the Commission (to monitor such activity) would be severe. A quick review of the Washington, D.C. Yellow Pages "Television" section (included as Appendix A), for example, reveals over 60 local electronics retailers that could carry third-party remote control devices. Moreover, this listing presents but a snapshot of the imponderable number of possible sources. Stores which don't necessarily fit the typical definition of consumer electronics retailers may nevertheless carry a wide selection of remote control devices. Even if the

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its intent to convey distinctive meanings. "Type" is used consistently throughout the Act to connote a generic class, kind, or category. See 1992 Cable Act §§ 4(b)(4)(A) (... "the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal); 11(f)(2)(C) ("the Commission shall ... take particular account of ... the various types of non-equity controlling interests") (both emphases added). By contrast, "model" is used, within Section 17 itself, to signify the specific style or design of an item. See id. § 17(a)(1) ("new and recent models of television receivers and video cassette recorders often contain...") (emphasis added). Given the well-recognized presumption that "the same words used twice in the same act have the same meaning," 2A Norman J. Singer, Sutherland Statutory Construction § 46.06, at 120 (5th ed. 1992) (citations omitted) ("Sutherland"), Congress' use of the word "types" in Section 17(c)(2)(D)(ii) plainly did not intend the level of specificity with which the Notice endeavors to imbue it.



cable operator could uncover all such providers, it would be at great financial and administrative expense.

Similarly, the listing of all remote control models, especially if required on a nationwide basis, would be onerous and costly. On a macro level, the Notice's proposals would result in the needless replication of efforts by thousands of cable systems, thereby hampering the operations of the cable industry as a whole. The administrative burdens imposed on the Commission to ensure that cable operators comply with such rigorous requirements would be equally arduous.

Such financial and administrative burdens are fundamentally at odds with Congress' directive to "minimize unnecessary regulation that would impose an undue economic burden on cable systems,"<sup>18</sup> and are unlikely to achieve the Commission's consumer education objectives without introducing a corresponding level of confusion and inequity. Regardless of the diligence with which a cable operator compiled such detailed listings, the resulting information mailed to subscribers would, a fortiori, contain untold and unforeseeable inaccuracies. Even if the cable operator were to do a perfect job collecting, analyzing, and publishing such information, inaccuracies would inevitably result due to the fact that between the time of data collection and subscriber mailing, existing retailers will have closed up, new retailers will have emerged, remotes included in the operator's listing will have been discontinued, and new ones will have been

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<sup>18</sup> 47 U.S.C. § 521(6).

introduced. It would be unfair and frustrating to those subscribers who visit the local "Hypothetical TV Retailer" in search of a third-party remote listed in the annual cable mailing only to find that it is no longer available or, worse yet, that the retailer has gone out of business. It would be equally unfair and frustrating to the new local consumer electronics retailers and third-party remote manufacturers who come on the scene after the annual cable mailing and who are thereby disadvantaged by the free advertising afforded their competitors.<sup>19</sup>

**3. A Better Approach: Have Both Cable Operators and Remote Manufacturers Play a Role in Informing Consumers Regarding the Compatibility of Third-Party Remote Controls**

TCI recommends the following three-pronged approach for informing cable subscribers about compatible third-party remotes:

- (1) Cable systems offering subscribers the option of renting a remote control unit would be required to notify their subscribers that they may purchase a remote from any source that sells such devices rather than renting it from the cable operator. The annual mailing would explain that third-party remotes are usually found in any store with a consumer electronics division, especially those that sell television sets. It would also advise the subscriber to identify the make and model of the set-top box connected to the subscriber's TV/VCR and to purchase a remote that is compatible with that make and model of set-top. (This would impose no burden on consumers since they already have to identify the make and model of their TV and VCR in order to purchase a universal remote).

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<sup>19</sup> While the Notice's proposal to require the listings to be current as of 60 days of mailing may make compliance by cable operators less difficult as a legal matter, it will do nothing, as a practical matter, to allay the confusion, frustration, and inequity caused by the listings' inaccuracies.

- (2) This mailing would also describe the generic characteristics of the types of third-party remotes that are compatible with the cable operators' set-top devices and encourage subscribers to call the cable operator to ask about the compatibility of a particular third-party remote the subscriber is considering purchasing; and
- (3) Third-party remote manufacturers, which generally already test the compatibility of their products with cable set-top devices, would be required to list on the remote's packaging those set-tops with which the remote is compatible.

This approach has several practical advantages. First, it will avoid the confusion, frustration, and inequities described above which would otherwise flow from the inevitable inaccuracies in the specific listings of remote control models and local retail sources. Indeed, it represents the most efficient and accurate method of ensuring compatibility, since the subscriber will merely have to match the make and model of the set-top box connected to his/her TV/VCR with the specific listings of set-top boxes on the third-party remote packaging. The likelihood of a match is further enhanced by the fact that local retailers will have strong incentives to ensure that the remote control units they carry are compatible with the set-top boxes used by the cable systems in their geographic market.

Second, this approach will eliminate the enormous administrative and financial burdens that would otherwise be imposed on the Commission and on cable operators, since each remote manufacturer would only have to test each set-top device once, as opposed to having thousands of cable systems duplicate efforts to investigate all third-party remotes.

Finally, this approach reflects current practices of third-party remote manufacturers and, in this sense, merely encourages these parties to pursue and perfect activity that they already have the economic incentive to undertake. For example, third-party manufacturers of universal remote control devices already test their products with a broad array of TVs, VCRs, and cable set-top devices and include a detailed listing of compatible products on their remotes' packaging.<sup>20</sup> These remote manufacturers have a marked incentive to ensure the compatibility of their products with various video devices.<sup>21</sup> The Commission's rules should recognize this marketplace reality and capitalize on it. Moreover, this approach will encourage cable set-top manufacturers and third-party remote manufacturers to continue to work together to ensure compatibility. This makes eminently more sense than forcing cable operators -- who lack the administrative apparatus, economic incentive, and equipment expertise -- to venture into this uncharted territory.<sup>22</sup>

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<sup>20</sup> See Appendix B for a sample of this practice by a commercially available universal remote.

<sup>21</sup> Importantly, this approach has worked very well in achieving compatibility to date, even though neither TV/VCR nor cable set-top device manufacturers currently list the third-party remotes that are compatible with their receivers.

<sup>22</sup> In the long term, a preferable solution might be to encourage Cable Labs to set up a facility where all set-top boxes would be available to allow third-party remote manufacturers to test and certify the compatibility of their remotes. In addition, the Commission could require any party selling or renting equipment, such as remote controls, to a subscriber for use with a cable box to certify or verify that its product complies with technical standards established by the Commission, much as it has done in the telco customer premises equipment context. See Proposals for New or Revised Classes of Interstate

**4. Cable Systems That Do Not Offer Subscribers the Option of Renting a Remote Control Unit Are Not Subject to the Notification Requirements of Sections 17(c)(2)(D)(i-ii)**

By the unambiguous language of the statute, a cable operator's consumer notification obligations under Sections 17(c)(2)(D)(i-ii) as described in the previous section are only triggered if the cable operator "offers subscribers the option of renting a remote control unit."<sup>23</sup> The Notice suggests, however, that the consumer information requirements adopted pursuant to these subsections will be imposed on "cable systems that offer remote control capability with their set-top devices."<sup>24</sup> Since, by virtue of Section 17(c)(2)(E)'s prohibition, all cable systems will be required to "offer remote control capability with their set-top devices," the Notice's proposal could be interpreted as requiring all cable systems to comply with Section 17(c)(2)(D)(i-ii)'s notification requirements. However, this interpretation would, in effect, read Section 17(c)(2)(D)'s threshold inquiry out of the statute which, of course, the Commission cannot do.<sup>25</sup> Nor can the Commission so broaden Section 17(c)(2)(D)'s

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and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS), First Report and Order, 56 F.C.C.2d 593 (1975); 47 C.F.R. Part 68 ("Connection of Terminal Equipment to the Telephone Network").

<sup>23</sup> 1992 Cable Act § 17(c)(2)(D).

<sup>24</sup> Notice at ¶ 16.

<sup>25</sup> "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." Sutherland § 46.06, at 119 (citations omitted).

unequivocal and limited scope.<sup>26</sup> Accordingly, TCI requests that the Commission's rules provide for the fact that cable operators who elect not to "offer[] their subscribers the option of renting a remote control unit" are not subject to the notification obligations the Commission adopts pursuant to Sections 17(c)(2)(D)(i-ii).

## **II. COMMISSION'S LONG-TERM COMPATIBILITY PROPOSALS**

### **A. The Commission Should Proceed Cautiously in Implementing its Long-Term Compatibility Proposals**

The Commission should adopt a cautious approach toward implementing its compatibility proposals for new equipment. Attempting prematurely to force high levels of compatibility would risk derailment of significant congressional and Commission policy objectives, including the rapid introduction of technological innovations and the further development of program diversity. Rather, the Commission should adopt a flexible approach to long-term compatibility which recognizes the primacy of natural technological evolution. Such an approach is consistent with Section 17's vision of an ongoing compatibility dialectic in which the Commission

periodically review[s] and, if necessary, modif[ies] the regulations issued pursuant to this section in light of any actions taken in response to such

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<sup>26</sup> A statute that is clear and unambiguous on its face need not and cannot be interpreted -- only statutes that are of doubtful meaning are subject to the process of statutory construction. See Sutherland § 45.02, at 5; see also ACLU v. F.C.C., 823 F.2d 1554, 1567 (D.C. Cir. 1987), cert. denied, 485 U.S. 959 (1988) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress").

regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.<sup>27</sup>

Adoption of the Commission's long-term compatibility proposals by the April 1994 deadline is not required by Section 17. Indeed, aside from the three specific functions of consumer electronics equipment that the statute seeks to restore<sup>28</sup> and the specific directives regarding converters and remote controls<sup>29</sup> (all of which are adequately addressed by the Notice's short-term proposals), Section 17 accords the Commission broad discretion to design and implement long-term compatibility solutions.<sup>30</sup>

In short, the Commission's previously expressed inclination to "develop[] rules that provide the least possible obstacle to technical improvements in both cable television and consumer

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<sup>27</sup> 1992 Cable Act § 17(A)(d).

<sup>28</sup> See id. §§ 17(c)(1)(A)(i-iii), (c)(2)(B)(i)(I-III). These three functions permit a subscriber to: (1) watch one channel while simultaneously taping another; (2) use a VCR to tape two consecutive programs on different channels; and (3) use advanced television picture generation and display features, i.e., "picture-in-picture" capabilities.

<sup>29</sup> Id. §§ 17(c)(2)(B-E).

<sup>30</sup> For example, Section 17(b)(2) was modified in conference to confer broader discretion on the Commission in determining whether and, if so, under what circumstances to permit cable operators to scramble or encrypt their signals. See 1992 Cable Act § 17(b)(2). Moreover, rather than mandating specific requirements for long-term compatibility, Section 17 merely directs the Commission to balance the costs and benefits of imposing compatibility against cable operators' need to protect their signals from theft. See id. §§ 17(b)(1), (c)(1)(A-B).

electronics ..."<sup>31</sup> is precisely the circumspect approach which should be pursued with respect to the Commission's long-term compatibility proposals.

**B. Compatibility Proposals for New Consumer Electronics Equipment**

**1. To Avoid Consumer Confusion, All Consumer Electronics Equipment Which Tunes Cable Frequencies Should Be Required to Comply With the Commission's "Cable Ready" Specifications**

Adoption of "cable ready" requirements for new TVs/VCRs will do little to improve equipment compatibility and reduce consumer confusion if consumer electronics manufacturers can avoid compliance with these requirements through creative marketing efforts. Electronics manufacturers should not be able to avoid compliance with the Commission's rules simply by substituting different, but like, terms for the specific terms "cable ready" or "cable compatible." Indeed, such an approach will further exacerbate consumer confusion and frustration. As one commenter has aptly described it:

In fact, the terms cable ready and cable compatible have not appeared on the products and literature of most major brands for several years. Nonetheless, consumers continue to purchase these products and become confused and frustrated with their performance when connected to cable. This is because consumers consider it only logical that if a product tunes the cable channels, it should work on the cable channels when they subscribe to cable. It is difficult to argue with that premise.... [A]voiding the use of the terms "cable ready" or "cable compatible" cannot justify the

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<sup>31</sup> Compatibility Between Cable Systems and Consumer Electronics Equipment, Notice of Inquiry, 8 FCC Rcd. 725, at ¶ 17 (1993).



sale of products which evade the intent of the legislation.<sup>32</sup>

To avoid increasing consumer confusion and frustration arising from the purchase of equipment which is not specifically marketed as "cable ready," or "cable compatible," the Commission should require all TVs and VCRs which tune cable channels to comply with all "cable ready" specifications adopted in this proceeding.<sup>33</sup> If a TV or VCR does not comply with these cable ready specifications, it should only be allowed to tune over-the-air channels.<sup>34</sup>

**2. While TCI Supports the Adoption of the IS-6 Channel Plan, the Use of Modular Tuners in TVs and VCRs Would Ensure Greater Long-Term Compatibility**

TCI supports the adoption of the IS-6 channel plan up to 1 GHz as proposed by the Notice,<sup>35</sup> because adherence to this standard in the near term will minimize the need for set-top boxes for frequency conversion.<sup>36</sup> However, because IS-6 is only

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<sup>32</sup> Time Warner Comments at 74.

<sup>33</sup> In this regard, TCI urges the Commission to adopt the proposal found at ¶ 35, IV of the Notice: "After the cable ready receiver regulations become effective, receiver manufacturers will be required to include new features, including improved tuners and a Decoder Interface connector in all new TV receivers and VCRs." (emphasis added).

<sup>34</sup> Similarly, all cable ready specifications adopted by the Commission must also apply to set-top boxes sold to the public by third-parties to prevent the very same difficulties and confusion from arising.

<sup>35</sup> Notice at ¶ 21.

<sup>36</sup> We note, however, in response to the Notice's inquiry at n. 29, that the IS-6 standard does not provide a channel identification scheme for digital compression, whereby multiple video channels would be carried within a single 6 MHz channel slot.